

**SIXTEENTH CIRCUIT JUDICIAL COMMISSION
JACKSON COUNTY, MISSOURI
APPLICATION FOR CIRCUIT JUDGE**

***PLEASE NOTE: RESPONSES TO THESE QUESTIONS WILL BE
THE APPLICANT IS SELECTED AS ONE OF THE NOMINEES FOR***



1. State your full name.

Lisa Noel Gentleman

2. State your date and location of birth. September 23, 1960 in Staten Island, New York.

3. State your present occupation, place of work, and job title. Self-employed attorney.

4. Provide the following information concerning your eligibility for the office of Circuit Judge:

(a) Are you at least twenty-five years of age? Yes.

(b) Are you licensed to practice law in Missouri? Yes.

(c) Are you a citizen of the United States? Yes.

(d) Are you a resident of Jackson County? Yes.

5. State whether you are able, with or without a reasonable accommodation, to perform the essential functions of a Circuit Judge, including the ability to preside over trials, conduct legal research and analysis, attend court anywhere in the State of Missouri, communicate clearly and effectively both orally and in writing, and expeditiously decide issues coming before the court. Yes.

6. State the year of your admission to the Missouri Bar and whether your license is and always has been in good standing. If not, please explain. I was admitted on April 27, 1990, and my license is in good standing.

7. List any other states, courts, or agencies in which you have been licensed as an attorney, and state whether your license is and always has been in good standing. I am licensed in Texas and Kansas. My license is in good standing in those jurisdictions.

8. Provide the following information for all colleges or universities, other than law schools, you have attended:
- (a) Name and location of institution: Duke University in Durham, NC.
 - (b) Dates attended and degrees received: I attended from 1978 to 1982 when I received a B.A.
 - (c) Significant activities, achievements, honors, and awards: I graduated cum laude. I served on the Student Judicial Committee.
9. Provide the following information for all law schools you have attended:
- (a) Name and location of law school: Southern Methodist University School of Law in Dallas, Texas.
 - (b) Dates attended and degrees received: I attended from 1982 to May, 1986 when I received a Juris Doctorate degree.
 - (c) Significant activities, achievements, honors, and awards: While in law school, in the fall of 1985, I received the honor of earning the highest grade in Criminal Law Clinic after I successfully defended in a jury trial an indigent individual charged with driving while intoxicated. In this clinical program, law students were assigned actual misdemeanor cases for indigent clients who would otherwise not be able to afford legal representation. Law students in the program worked with a faculty advisor who appeared in court with us during any representation. The student receiving the highest grade from participation in the criminal clinic each semester earned the opportunity to serve as the student advisor to the new law students for the next semester. I received that honor and experience.

My activities during law school included second chairing a felony jury trial styled *State of Texas v. Britt Rognalson* who was charged with murdering her infant child during my second year in law school. My client's Rottweiler dog mauled her infant to death while my client slept nearby in a drug-induced stupor. The client was originally charged with homicide by omission based upon her failure to abide by her statutory duty under the Texas Family Code to protect the child from harm. Later, the charge was amended to Felony Injury to a Child, which carried a possible punishment of 5 years to 99 years imprisonment and up to a \$100,000 fine. The case proceeded to a jury trial resulting in a conviction of the lesser-included misdemeanor punishable by only 1 year in jail.

I was responsible for all phases of trial preparation and trial presentation including testimony of witnesses and exhibits, as well as the selection of an expert witness

regarding the vicious propensities of dogs. The jury trial lasted one week, during which time I received permission from the Honorable Ed Kinkeade of the Dallas County District Court to participate fully in all aspects of the trial including examination of witnesses and bench conferences despite the fact that I was a law student. Judge Kinkeade docketed the trial for my Spring Break to help with my school schedule.

This case was my first exposure to an individual client to whom I owed the highest duty of loyalty, advocacy and zealousness, but whom I actually found morally repugnant. There were numerous intellectual challenges and legal research issues created by the State's decision to charge the case in the manner that they did. The result was considered outstanding in light of the fact that the infant died and the seriousness of the circumstances surrounding the death.

Also during law school, I worked on a death penalty appeal which resulted in making new law styled *State of Texas v. Ronald Curtis Chambers*. I had the opportunity to assist with the death penalty appeal of Mr. Chambers after he was convicted by a jury and write an independent study paper about the issues and my experiences. Mr. Chambers, nicknamed "Buffalo" due to the fact that his friends thought his nose resembled that of a buffalo, was convicted of capital murder for the homicide and assault of a young co-ed couple from Texas Tech University who were visiting Dallas when abducted by Mr. Chambers from a local nightclub. Mr. Chambers was convicted by a jury of murdering, robbing and abducting them in the trunk of his car.

According to the trial evidence, Chambers transported the co-eds to the Trinity River bottom where he shot them both and left them for dead. As Chambers was leaving the scene, the young man called out to check on the wellbeing of his girlfriend, who did not answer. Not answering saved her life. Chambers returned and shot the young man repeatedly in the head, killing him. His girlfriend not answering literally saved her life because Chambers thought she was already dead. After Chambers made his getaway, the girl victim walked to a business located approximately 5 miles away and received treatment for her wounds. She testified against Chambers at trial. Her eyewitness account identifying him as the man who shot her and killed her boyfriend resulted in his conviction. Blood evidence and recovery of the shotgun he used also linked him to the crime.

Under Texas law, in order to convict an individual of capital murder, 3 special interrogatories must be answered positively by the jury basically stating that the defendant is a sociopath who cannot be rehabilitated and will continue to be a danger to society. These questions are presented during the bifurcated punishment phase of the trial only after conviction is reached. Normally, to sustain their burden of proof, the prosecution puts on psychiatric evidence that the defendant is a sociopath in the punishment phase of the bifurcated trial after conviction for capital murder. For 20 years prior to Mr. Chambers' trial, the state of Texas used the testimony of Dr. James

P. Grigson, a psychiatrist who testified that every capital murder defendant he interviewed was a sociopath. His testimony was routinely used successfully to convince juries to impose the sentence of death in the punishment phase of capital trials.

Dr. Grigson was court appointed to interview defendant Chambers to determine if there was any chance of an insanity defense. Chambers made "confession like" statements of culpability during the interview with Dr. Grigson. Chambers had not been given any *Miranda* type warnings prior to his meeting with Dr. Grigson. In an unprecedented move, the prosecution used those statements in the guilt/innocence phase of the trial as direct evidence of Chambers' guilt rather than waiting to use the statements in the punishment phase. Astute trial counsel objected to the statements being used in the first phase saying that since Dr. Grigson had been court appointed, he was an agent of the state under *Miranda* and its progeny. While this may seem obvious now, it was not the status of the law at the time of Mr. Chambers' trial.

After the jury convicted Chambers and recommended the death penalty as his punishment, I became involved in his appeal. My activities included briefs at the Texas Court of Criminal Appeals, the Federal court on a habeas corpus action and ultimately the United States Supreme Court. As a result of these efforts, Mr. Chambers' conviction was reversed on the grounds that he had not received appropriate warnings prior to making self-incriminating statements. The Chambers ruling made new law in applying *Miranda* retroactively and extending the definition of state actor to include the court appointed psychiatrist or other agent. As a side note, Chambers was retried and convicted again based upon the eyewitness testimony. That case contained within it a *Batson* issue, which led to its reversal. He was retried a third time, which resulted in another death penalty conviction.

Additionally, I served as a legal intern for the Honorable Craig T. Enoch in the 101st District Court of Dallas County, Texas. Judge Enoch's court had general civil jurisdiction. My duties included reviewing motions and making recommended rulings for the Court. I did additional legal research and drafted orders for the judge to review. He used many of my proposed orders without making changes. I had the opportunity to observe civil jury and bench trials as well as numerous hearings on motions before the Court. During the time that I served as his law clerk, Judge Enoch was an officer of the Dallas Bar Association and headed the committee charged with responsibility for overseeing the new Dallas County Courthouse and jail. This committee received input from the bench and bar regarding design and functional issues concerning the construction of the new courthouse. The committee hired its own architect to provide ideas on how best to implement the needs of the legal community into the building. I functioned as the unofficial secretary of the committee while it met twice weekly during construction of the facility. This experience taught me the benefit of collaborative work between the bench, bar and community towards a goal of mutual interest. It illustrated to me the power of the bar association at a young age and motivated me to become involved once I was admitted.

10. State whether you have ever been suspended or expelled as a student from any school or educational institution. If so, please explain. No.
11. List, in chronological order, all non-legal and legal employment you have held post-high school. Include the name and location of each employer, job title, dates of employment, and reason for termination of employment.

May 1984 to May 1986: Law Clerk for Perini, Mills & Carlock

Duties: Handled trial preparation tasks and legal research for a premiere criminal defense and family law boutique law firm in Dallas, Texas.

May 1986 to April 1987: Associate for Smith, Miller & Carlton, P.C.

Duties: Handled motion practice and hearings, legal research and drafting and client consultations for an estate planning and probate firm in Dallas, Texas.

April 1987 to December 1989: Assistant District Attorney for Dallas County, Texas.

Duties: Conducted over 100 trials and handled more than 250 motions and hearings; handled all aspects of criminal prosecution for a felony trial docket including robbery, rape, murder, assault, property crimes, drug offenses, child sex abuse cases; responsibility for management of a docket of approximately 2,000 cases.

August 1990 to May 1991: Assistant Prosecuting Attorney for Jackson County, Missouri.

Duties: Conducted all phases of criminal prosecution for felony trial docket from review through disposition, specializing in homicide trials including capital litigation.

August 1991 to February 1993: Litigation Associate for Shamberg, Johnson & Bergman.

Duties: Participated in all aspects of litigation of potential cases through settlement or trial for a plaintiffs' practice specializing in personal injury, products liability, medical malpractice and commercial torts.

February 1993 to December 1995: Litigation Associate for Miller, Dougherty & Modin.

Duties: Case management responsibility for plaintiffs' personal injury practice including wrongful death, automobile liability, medical negligence, products liability, sexual harassment and employment discrimination matters.

January 1996 t May 1999: Senior Associate for Welch Martin Albano & Manners

Duties: Responsibility for all aspects of discovery, mediation, settlement or trial for extensive docket of plaintiffs' personal injury cases, including medical negligence, products liability, automobile liability and employment discrimination matters.

May 1999 to December 2010: Deputy County Counselor for Jackson County, MO.

Duties: First chair responsibility for all phases of trial preparation for all types of lawsuits brought by or against Jackson County, Missouri, including personal injury, contract, professional negligence, probate, employment and civil rights litigation.

September 2011 through December 2013: Regional Vice President of Resource Development for the American Lung Association

Duties: responsibility for a \$310,000 fund raising budget, administration, planned giving, and event planning for a Kansas City metropolitan not-for-profit national affiliate focused on lung disease, tobacco cessation, and improvement of the air quality.

May 2014 through October 2015: Managing Attorney of the Central Office of Legal Aid of Western Missouri

Duties: Administrative and managerial duties for not-for-profit which delivers legal services to the indigent population. Responsibility for all aspects of a litigation docket for housing cases in the Central Office located in Kansas City, Missouri.

November 2015 through present: Principal of Law Office of Lisa Gentleman

Duties: Responsibility for all matters in a general legal practice.

In each of these instances, I changed jobs for a better opportunity.

12. Describe the nature and extent of your experience as a practicing attorney in the trial and appellate courts, and explain how such experience demonstrates the quality of your legal work.

My experience as an attorney has been focused upon public service. As a prosecutor in Dallas, Texas I worked on a trial docket that included responsibility for approximately 2,000 felony cases at a given time. It was common place for me to do two jury trials a week. The severity and complexity of the cases increased with my tenure until I was primarily involved with homicides, child sex abuse cases and capital murder matters. This experience taught me the advantage of a trial judge who is skilled at the efficient administration of the court.

Once in Kansas City, I continued my public service with the Jackson County Prosecutor's office where my cases focused on homicides and capital murders. On one given Monday during my tenure there, I had over 100 people in the courthouse by virtue of a subpoena bearing my name for 5 different homicide trials scheduled on that same day. While I was prepared for trial in all 5, not a single one of the cases went to trial that day. I participated in several high profile homicide and capital murder trials, which taught me the significance of preserving the record regarding appellate issues in the trial court.

After my service in the prosecutor's office, I began my time as a personal injury lawyer working both on behalf of injured individuals and later on behalf of Jackson County, Missouri. This work was varied and required me to learn numerous substantive areas and all procedural areas of the law. I did arbitrations, mediations, administrative hearings, motion practice, bench and jury trials and appellate work. This experience taught me how interwoven all aspects of the law can be from pleadings to final result on appeal. The fact that I worked on complex legal matters such as civil rights litigation, wrongful death cases, legislative interpretation matters and capital murders shows the breadth and quality of my legal work.

13. Provide a representative list of at least ten cases in which you served as the primary attorney at trial or an administrative hearing. The list should include the style of each case, court or administrative agency, identification of your client, and the nature and date of disposition. Please see attached.
14. If you have appellate experience, provide a representative list of cases in which you served as the primary attorney on appeal. The list should include the style of each case, appellate court or administrative agency, identification of your client, and the nature and date of disposition. Please see attached.
15. If you are serving or have served in a judicial capacity, describe the nature and extent of your judicial responsibilities, the types of dockets handled, and any special expertise developed.

Not applicable.
16. If you are serving or have served in a judicial capacity, provide a representative list of at least ten cases over which you have presided to completion. The list should include the style of each case and the nature and date of disposition. Not applicable.
17. If you do not have significant experience in litigation or in a judicial capacity, describe any other legal experience or accomplishments in the legal profession that may qualify you to serve in the office of Circuit Judge.

In addition to my litigation experience, I believe my extensive involvement with the local bar associations and community organizations, including leadership roles, helps qualify

me to serve in the office of Circuit Judge.

18. List all bar associations and law-related organizations of which you are or have been a member, with any offices held and dates: The Missouri Bar Association; The Kansas Bar Association; The Texas Bar Association; The Association of Trial Lawyers of America; the Missouri Association of Trial Lawyers; The Kansas Metropolitan Bar Association; the Association for Women Lawyers of Greater Kansas City; The Eastern Jackson County Bar Association; KCMBA Foundation and Lawyers Encouraging Academic Performance Foundation. Offices: I have held the office of President, President-elect, Secretary and immediate Past President of the Association of Women Lawyers of Greater Kansas City from April 1996 through April of 2000; I served as Lifetime Board member, President, President Elect and Event Chair for Lawyers Encouraging Academic Performance Foundation from 1998 to the present; I served on the Board of the KCMBA for 8 years; I have served on the KCMBA Foundation Board for 6 years; I served on the Legal Aid of Western Missouri Board for 15 years including two years as President; I have served as Secretary of the statewide Legal Aid Board for 10 years I serve on the Circuit Court Advisory Committee for the 16th Judicial Circuit; I served as a member of the planning committee for the Missouri Bar annual meeting in 1999. I served as a steering committee member for the Midwest Regional Women in Law Bar Conference in April of 1998.

19. List any published articles or books you have authored and any significant programs or events for which you served as a primary speaker.

2009 -- 2010	Sexual harassment prevention training presented to the Jackson County Sheriff's Department
June 5, 2007	Moderator, "Teen Dating Violence" presented jointly by KCMBA Public Service Committee and KCMBA Family Law Committee
2005 -- 2008	Moderator, "Roundtable on Leadership" presented at the KCMBA Bar Leadership Academy final session each year
June 6, 2003	Moderator, "Achieving a Good Result in Trial and Keeping it on Appeal" presented jointly by KCMBA Women in the Profession Committee and AWL
April 15, 2003	Moderator, "How to Thrive in a Large Law Firm or Organization" presented by KCMBA Women in the Profession Committee
March 18, 2003	Moderator, "How to Take More Successful Depositions" presented by KCMBA Women in the Profession Committee
February 7, 2003	Moderator, "New Practices in the Practices of Family Law" presented by KCMBA Women in the Profession Committee
July 17, 2002	"Family Medical Leave Act of 1993 for Use by Managers at a Public Entity" presented to managers and human resources personnel at Jackson County, Missouri
January 22, 2002	"Construction Contracting for Public entities in Missouri" presented to lawyers,

architects and engineers in Kansas City, Missouri

1999 – 2002	"How to Try a Civil Lawsuit" presented to high school students attending Girls' State in Warrensburg, Missouri
June 26, 2001	"Criminal Trial Techniques" presented to high school students attending Girls' State in Warrensburg, Missouri
1999- 2004	Employment discrimination, including sexual harassment, race and gender discrimination and Family Medical Leave Act (FMLA) training to Jackson County, Missouri personnel, department directors and employees
August 15, 2001	"The Adversarial Process" presented to Jackson County, Missouri personnel, department directors and employees
November 2, 1999	"How to be a Successful, Aggressive and Assertive Woman Lawyer" presented at UMKC Law School
March 25, 1999	"Simplifying Medical Terminology before a Jury" presented at MATA Tried and True Trial Tips Seminar
May 1998	"Tell a Story in Voir Dire and Opening" presented at UMKC Law School
April 17, 1998	"Creating a Personal Courtroom Style" presented at Midwest Regional Women in Law Conference
March 13, 1998	Moderator, "What You Don't Know Can Hurt You" Ethics and Professionalism Seminar sponsored by UMKC Law School
April 25, 1997	"Leveling the Playing Field in Discovery" presented at KC MBA Trial Techniques for the Female Advocate Seminar
March 14, 1997	Moderator, "Sexual Harassment Trial Strategies" seminar sponsored by UMKC Law School
May 1996	"Avoiding Liability for Sexual Harassment" presented to a nationwide business organization at its annual meeting in Seattle, Washington
March 24, 1994	"Premises Liability Trends" presented at Women in Litigation Seminar in Kansas City, Missouri
March 25, 1994	"Preparing a Successful Settlement Brochure" presented at Handling Personal Injury Cases Seminar in Kansas City, Missouri
October 22, 1993	"Deposition Abuses and How to Prevent Them" presented at UMKC's Taking and Defending Depositions Seminar

20. Do you now or have you ever held any elective or appointive public office or position? If so, please explain. I was elected and served as my ward committeewoman for 4 years.

21. Provide the branches and dates of any military service or other public service not otherwise covered in this application. If discharged from the military, state whether the discharge was other than honorable. Not applicable.

22. Describe your community and volunteer service activities, including any organizations (outside the legal profession) with which you are affiliated and any offices held. I served on the Women's Foundation Board from 2000 to 2009, including chairing the grants allocation and golf fund raising event committees and service on the executive committee. In 2010, I helped initiate and co-chair the alumnae committee of the board. From 1999-2011, I served on the board of the American Lung Association of the Plains Gulf Region. I held offices of Event Chair, Secretary, Vice-President, President, and ultimately became a staff member as Regional Vice President for Resource Development. Judge Duane Benton of the Missouri Supreme Court asked me to become involved in a gender equity issue when he realized there was no law curriculum for the participants of Girls State like there was for Boys State. He asked me to help create one. With the help of the Board of AWL, in June of 1999, I spearheaded an effort to prepare a law related curriculum for the Girls State program held at Central Missouri State University. Approximately 27 female lawyers and judges, including myself participated in the program over 3 days. We worked with 250 students in the program, which was the highest enrollment of any of the curriculum tracks presented that year. The administration of Girls State was so pleased with the results that they requested AWL take over the planning for the curriculum indefinitely. We had the opportunity to teach high school girls the qualities that make good lawyers and judges such as civility, fairness, leadership, determination and creativity.
23. List any significant honors or awards you have received that otherwise have not been covered in this application. On September 23, 2005, I received the Coburn Award for Community Service from the Missouri Bar Association. On December 11, 2003, I received the President's Award presented by KCMBA from President Sly James. On February 9, 2016, I was crowned Queen of Mardi Gras by the Lawyers Encouraging Academic Performance Foundation. On March 8, 2011, I received the President's Award from LEAP. On May 5, 2005, I received the Public Employee Recognition Award for Distinguished Community Service. On April 10, 2010, I received the Leadership Award from the American Lung Association. On April 18, 2009, I received the Volunteer Appreciation Award from the American Lung Association. On December 13, 2008 I received the Leadership and Service Recognition Award from LEAP. On February 8, 2005, I received the President's Award from LEAP. On May 5, 2004, I received the Legal Services Leadership Award presented by LAWMO. In April of 1999, I received the Outstanding Leadership Award Presented by AWL.
24. Are you delinquent in the payment of any federal, state, county or city taxes? If so, please explain. No.
25. Have you ever been convicted of a misdemeanor or felony or received a suspended imposition of sentence in any federal, state, or military court? If so, please explain and provide the style of the case (including case number), the court, the date of the conviction, and the sentence or fine imposed. No.
26. Have you ever been held in contempt of court? If so, please explain. No.

27. Have you ever been sued by a client or been a party to any litigation, other than as a guardian ad litem, plaintiff ad litem, or defendant ad litem? If so, please explain and provide the style of each case, the court, your role as plaintiff or defendant, and the nature and date of disposition. In 1986, I was sued by my former landlord concerning a fire that originated in the other side of the duplex I rented from her while I was out of town. I countersued for destruction of my personal property lost in the fire. Mutual releases were executed and the law suit was dismissed. It was in Dallas County, Texas civil district court.
28. Have you ever been disciplined or cited for breach of ethics or professional conduct by a court or by any bar association or committee thereof? If so, please explain. No.
29. If you are or were a member of the judiciary of the State of Missouri, please state:
- (a) Whether an order of reprimand, removal, retirement, suspension or other disciplinary action has ever been entered against you by the Supreme Court of Missouri for breach of the Code of Judicial Conduct or the Canons of Judicial Conduct? If so, explain the details of such breach and the date, nature, and duration of the discipline imposed.
 - (b) Whether a reprimand or admonishment has ever been entered against you by the Commission on Retirement, Removal and Discipline for any of the causes specified in Rule 12.07 of the Supreme Court Rules Governing the Judiciary. If so, explain the details of such cause and the date and nature of the discipline imposed.
 - (c) Whether, to your knowledge, you are the subject of a complaint that is currently under investigation by the Commission on Retirement, Removal and Discipline. If so, explain that nature of such complaint and the status of the investigation.

Not applicable.

30. Provide any additional information that you consider relevant to your qualifications for the office of Circuit Judge.

The balanced nature of my courtroom experience is the most salient quality I have to offer to the job of Circuit Court judge. I have tried an extensive number of criminal, juvenile, and civil cases to a judge or jury. I have learned the rules of evidence, rules of courtroom practice and procedure and matters of substantive law in each of these areas. During those experiences, I have been exposed to all manner of trial situations. It takes years of experience and the variety of experience that I possess to develop the background necessary to recognize trial issues and resolve them appropriately. I possess the depth and breadth of trial experience that will foster confidence in the judiciary.

Additionally, I have demonstrated balance in my activities by developing leadership skills thorough community and bar related involvement. A judge is responsible to lead in numerous situations inside and outside the courtroom. Through the relationships I have

developed with the judiciary, community and bar leaders, I have learned leadership. Leadership is action, not position. I have sought and accepted leadership positions throughout my life and career. My leadership skills are displayed in my accomplishments at work, in the courtroom, in bar association activities, in my community service and in my personal life.

The most admired members of the judiciary have certain personal qualities that make them exemplary. I have always admired hard work and perseverance in others, and I strive to be a hard worker myself. Someone asked me recently what contribution I thought I could make to the bench. I answered that I could show up on time and keep the lights on meaning that I could keep the courtroom in use every day. Nothing frustrates the public more than not being able to get access to their day in court. I would never forget that the court system belongs to the consumers who use it.

32. List the names and contact information (title, mailing address, telephone, and email address) of the **five** persons whom you have requested to provide letters of reference regarding your character and judicial qualifications. Do not list as a reference any judge who currently sits in the Sixteenth Judicial Circuit.

Michael W. Manners
James R. Wyrsh
Lynne Bratcher
Thomas Phillips
Rosalie McGhee

**List of Cases for Lisa Noel Gentleman in Response to Questions 13 & 14
Concerning Litigation and Appellate Experience**

J.S. v. Beaird, et al

28 S.W. 3d 875 (Mo. 2000)

Missouri Supreme Court Case Number: SC82274

October 17, 2000

Lead Counsel for Respondents

Opposing Counsel: James R. Wyrsh

JS was convicted of statutory rape in 1983 and served time. He was discharged in 1993 and resided in Jackson County when a 1994 statute required certain sex offenders to register. JS claimed he did not have to register because he had not "come into the County" as the language of the statute provided, having earlier arrived. He claimed that the statute did not apply to him and was unconstitutional. The trial court, Honorable Jon Gray, found in favor of the Jackson County Prosecutor (Robert Beaird) and Sheriff Tom Phillips requiring registration. Direct appeal went to the Missouri Supreme Court since the case challenged the constitutionality of the Sex Offender Registration Act (SORA) statute, Section 589.400 *et seq.*

The decision by the Missouri Supreme Court focused on the meaning of the language of "upon coming into the County" contained in the statute which triggered the registration requirement. Since JS was already in the county prior to enactment of the statute, the Missouri Supreme Court felt he was exempted, stating that the precise language used in the statute referred to establishing a residence for the first time within the County as a triggering event requiring registration. I handled all trial matters as well as briefing and oral argument in the Missouri Supreme Court. Following the decision, I met with members of the legislature to discuss the impact of the case and wording to eliminate the loophole from the case. New legislation was enacted the following session.

In re R.W. v. Sanders

168 S.W. 3d 65 (Mo. Banc 2005)

Missouri Supreme Court Case Number: SC 85652

January 11, 2005

Lead Counsel for Respondents

Opposing Counsel: John R. Cullom

RW was a convicted sex offender who received a suspended imposition of sentence for acts occurring in 1994. He was sentenced in 1995, after enactment of the Sex Offender Registration Act. Therefore, he was ordered to register as a sex offender during his 5 year probation, but he ceased registration when his probation concluded. The Jackson County Sheriff and Prosecutor notified him that he needed to register. He filed for declaratory and injunctive relief to prevent enforcement of the Sex Offender Registration Act (SORA) and the criminal penalties associated with failure to register. The trial court, the Honorable Edith Messina, denied relief. He appealed to the Missouri Supreme Court

alleging that the statute was unconstitutional as applied to him in his circumstances.

The decision by the Missouri Supreme Court reiterated that the registration scheme enacted by the Missouri legislature is a civil regulatory scheme rather than an *ex post facto* law requiring a new penalty for a crime committed before the registration requirement was enacted. Due to the timing of RW's commission of the crime before the statute was enacted, if registration constitutes punishment, it would be impermissible to apply a new penalty that was not in existence at the time of his commission of the crime. The ruling analyzed the facts in light of the United States Supreme Court decision in the *Smith v. Doe*, 538 US 84 (2003), involving the Alaska sex offender registration scheme. The Missouri Supreme Court found the Missouri registration statutes to be a permissible civil regulatory scheme that does not impose punishment so it is not unconstitutional. Judge Teitleman wrote the opinion, which was significant in several ways. Not only did it declare the Missouri statute constitutional, it forever ended speculation that the registration requirement in a suspended imposition plea continued despite the end of probation. I handled all trial matters as well as briefing and oral argument in the Missouri Supreme Court.

Doe v. Phillips, et al

194 S.W. 3d 833 (Mo. banc 2006)

Missouri Supreme Court number: SC86573

June 30, 2006

Lead counsel for Respondents

Opposing Counsel: Arthur Benson

This case involved 11 offenders, referred to as the "Does," who pled to or were found guilty of various sexual crimes, but were not adjudicated as "sexually violent predators." The trial court, the Honorable Jon R. Gray, ordered them to register. In the Missouri Supreme Court, they made an equal protection claim that their relatively minor offenses should not be treated the same by requiring registration as those more serious offenders who had been proven to be "sexually violent predators" according to the language of the statute. Since the statute treated both classes the same, the Does claimed it was unconstitutionally *ex post facto*, a respective law and/or a bill of attainder, all prohibited by the Missouri constitution.

Judge Stith ruled that the Missouri SORA did not violate the *ex post facto* prohibition or the procedural and substantive due process clauses. Both *JS v. Beaird* and *RW v. Sanders* were cited in this decision. Further, the ruling held that Missouri's SORA does not violate equal protection principles. The statute was found not to be a bill of attainder or special law. However, the Supreme Court did find that the registration obligation was retrospective in application to those of the Does that committed their crimes prior to its enactment. Thus, those Does who were convicted or pled guilty prior to date of the enactment of the statute on January 1, 1995, are exempted from registration. I handled the trial matters, briefing and oral argument for the Jackson County prosecutor and sheriff.

Henry Rizzo, et al. v. State of Missouri

189 S.W. 3d 576 (Mo. 2006)

SC87550

April 25, 2006

Co-Counsel for Jackson County Respondents with James R. Wyrsh

Opposing Counsel: Attorney General Jay Nixon and Paul Wilson

The Missouri legislature passed House Bill 58 (Section 115.348) in 2005 which contained a provision that no person shall qualify as a candidate for elective office who has been found guilty or pled guilty to a felony or misdemeanor under the federal laws of the United States. This provision was within a larger statute that discussed political subdivisions. Mr. Rizzo, a member of the Jackson County legislature sought re-election to that office, but the State of Missouri filed to disqualify him based upon the provision buried within House Bill 58. Rizzo and two voters in Jackson County sued claiming that the statutory provision was a violation of the equal protection laws. Judge Callahan in Cole County ruled the statute unconstitutional. The State of Missouri appealed. The Missouri Supreme Court reviewed *de novo*.

Mr. Rizzo was my client in his capacity as a member of the Jackson County legislature. Due to the importance of the issue to him personally, he hired James R. Wyrsh to represent him individually. Mr. Wyrsh and I worked on the case together. We claimed that the statute violated the so called "single subject" requirement that statutory language not contain multiple different issues under one heading. This practice, called "logrolling" was used to group multiple unrelated issues together so as to garner enough support for passage. The practice was outlawed by Article III, Section 23 due to the confusion it created with unrelated material under a heading or topic that did not correlate. The Missouri Supreme Court determined that the trial court had correctly struck down the statute as unconstitutional in that it violated the single subject requirement. Mr. Rizzo was re-elected to his position.

Martin Goldman, M.D. and Stephen Hamberger, M.D. v. Truman Medical Center

CV97-31606 before Honorable John Moran in Division 16 of Jackson County

Plaintiffs' Attorneys: Michael W. Manners, Lisa N. Gentleman and Dennis Egan

Defense Attorney: Brian Finucane

Trial to the Court on a Preliminary/Permanent Injunction following the granting of a Temporary Restraining Order

Trial Dates: February 1998 through March 1999

Second Chair

Plaintiffs Martin Goldman, M.D. and Stephen Hamberger, M.D. were Chairs of their respective departments at Truman Medical Center (TMC) and the University of Missouri Kansas City Medical Center when they signed a letter to the Board of Directors criticizing Dr. Anderson, who was the Executive Director of TMC and the Dean of the Medical School, for his ineffective management of the hospital and failures in the Medical School. Dr. Anderson retaliated against them for their criticism by trying to remove them from their positions as Chairs of the Departments at the Hospital and

University. Plaintiffs' counsel successfully obtained a Temporary Restraining Order preventing TMC from removing the doctors from their positions, and we ultimately obtained a permanent injunction preventing the removal of the doctors because we demonstrated a legally protectable interest in their jobs which could not be taken with due process and just cause under the hospital bylaws and retaliation was not good cause.

The trial took approximately a year to complete with nearly 30 days of trial spread out over that time frame. Judge Moran issued Findings of Fact and Conclusions of Law on April 13, 1999. I had the responsibility for presentation of half of the witnesses, preparation of exhibits, location and hiring of an expert witness, scheduling and coordination of the testimony, legal research, client contact, interaction with opposing counsel and co-counsel, and mediation resulting in a confidential settlement for damages following issuance of the permanent injunction order in Plaintiffs' favor by the Court.

Missouri Division of Family Services v. Karen and Paul Smith

Before the Honorable Jay Daugherty, Family Court Judge of Jackson County

Trial before the Court on a Proceeding to Terminate Parental Rights

Trial Dates: October 1 through 3, 1997

Attorney for Parents: Betsy D. Badger

Guardian Ad Litem for Parents: Lisa N. Gentleman

Attorney for the Division of Family Services: Kayla Groves

Lead Counsel

Karen and Paul Smith are an interracial married couple with marginal intellectual capabilities who had five children under the age of five, including two sets of twins, when the Division of Family Services moved to terminate their parental rights stemming from allegations that one of the youngest set of twins "failed to thrive." During the trial, DFS advanced the theory that my clients' borderline intellectual functioning made them unfit parents who were incapable of providing basic needs to their children. DFS elicited testimony that the children would ultimately be smarter than the parents as part of their case for removal of the children from their natural parents.

During the bench trial, we proved that the couple was caring and loving, capable of earning a living to provide food, shelter and medical supplies, and wanted to raise their children themselves. We proved through expert testimony that the youngest twin did not meet the medical definition of "failure to thrive syndrome," a form of child abuse, but rather that the Emergency Room physician "hot lined" my clients because of their abject poverty, circumstances of squalor and the fact they were an interracial couple. Ultimately, Judge Daugherty ordered termination of parental rights and placed all five children with an adoptive family willing to take them all that had been identified to the Court prior to trial.

Estate of Donald Fenn and Patricia Fenn v. Doskocil, AAA Rental All and Kansas Enterprises

Before the Honorable C. William Kramer, Division 17 of Jackson County

Jury Trial on a Products Liability Claim

Trial Dates: September 2-12, 1997

Opposing Counsel: Robert Henderson represented the supplier; Jack Bangert and Mark Katz represented the manufacturer

Second Chair

Donald Fenn rented a piece of lawn equipment to use in the yard called a stump grinder, which had a combustion engine much like a lawn mower that expelled carbon monoxide gas when operated. The exhaust vent was supposed to have an inexpensive cover on it to divert the gas from the operator's face, but the particular one Mr. Fenn rented did not have the cover on it nor did the rental facility warn him of the danger of carbon monoxide poisoning or provide him with instructions for the safe use of the product. As a result, Mr. Fenn sustained brain damage, tremors and monoclinic headaches from inhalation of poisonous fumes while using the stump grinder outside over a period of approximately two hours. Mr. Fenn died of other causes within eighteen months of the injury. The jury returned a verdict for his widow, Patricia Fenn, in the amount of \$275,000.00.

During the jury trial, I was responsible for presentation of the medical evidence and damage evidence to the jury. I was responsible for preparation of the exhibits, assistance with trial and voir dire, client contact and coordination of witnesses for testimony at trial. I handled pretrial discovery matters including numerous depositions.

Ronnie and Tonya Van Meter v. Dahlsten Truck Line, Inc. and Dale Chaney

Before the Honorable William Ely of Division 2 of Jackson County

Jury Trial on Negligence and Loss of Consortium Claims

Trial Dates: January 29 through February 2, 1996

Opposing Counsel: Hal D. Meltzer

Lead Counsel

Ronnie Van Meter severed a finger on his left hand while he assisted an 18 wheeler tractor trailer driver back into a docking area to be unloaded. Plaintiff claimed that the negligent conduct of the driver who failed to follow his own procedures against driving forward once unloading had begun caused the injury. Defendant claimed that the injury was caused by the carelessness of Plaintiff by placing his hand on the door of a moving truck. Judge Ely prevented the testimony of Plaintiff's expert witness in the safe operation of and 18 wheeler tractor trailer ruling that the topic was one of common knowledge to the jury and expert testimony was not necessary to the jury in rendering its verdict. A defense verdict was entered and the judgment was affirmed on appeal. I handled all aspects of the trial and appeal. The appeal issue focused on the thwarted use of the expert. The appeal is found at 934 S.W. 2d 680 (W.D. 1997).

Nancy McReynolds v. Midwest ADP

Before the Honorable Gary Fenner of the United States District Court for the Western District of Missouri

Jury Trial on Sexual Harassment Claims

Trial Date: Week of April 7, 1997

Plaintiff's Counsel: Christopher Fairchild

Defense Counsel: Lisa N. Gentleman and Michael W. Manners

Lead Counsel

Plaintiff Nancy McReynolds was employed as a substance abuse counselor with Midwest ADP, an organization that provides probations services to the court system, when she claimed that she was sexually harassed by a co-worker. Plaintiff never reported the co-worker's harassment to her boss, but another management employee became aware of the situation and notified the owner who did an investigation. Following a prompt and thorough investigation, the harassing co-worker was terminated within a matter of days. Plaintiff felt upset that others knew about the situation so she quit. Plaintiff obtained another job for higher pay and then sued Midwest ADP for sexual harassment despite the fact that they took prompt remedial action upon learning of her complaint. The jury rendered a defense verdict on behalf of my client. I handled voir dire and the presentation of several witnesses. I handled the cross examination of the Plaintiff at trial.

Kansas City Housing Authority v. Leroy Rhodes

Public Housing Eviction Administrative Hearing

Hearing Officer: Richard T. Bryant

June 2015

Lead Counsel for Defendant

Opposing Counsel: Kevin R. Thomas

Mr. Rhodes resided in Kansas City Public Housing for approximately 16 years during which time he had numerous infractions of the regulations. In 2014, a new manager took over and expressed frustration with Mr. Rhodes' hoarding in his apartment, as well as the general level of uncleanness therein. Mr. Rhodes failed several regularly scheduled housekeeping inspections, and he received numerous violation notices for infractions related to his dog. He was quarrelsome with the staff of the Housing Authority and allegedly threatened to assault the maintenance repair employee. He was ordered not to smoke on the premises since the Kansas City Housing Authority recently enacted regulations that no one be permitted to smoke within their units. On the last day to request a hearing on his eviction proceeding, he sought assistance from Legal Aid of Western Missouri. I entered my appearance on Mr. Rhodes' behalf and conducted an investigation into the situation.

The client is handicapped and wheelchair bound. He is a combat veteran of the Vietnam War with Parkinson's disease, high blood pressure and diabetes, all exacerbated by his chain smoking. I worked with his doctors to establish the diagnosis of hoarding and sought an accommodation for that disability. I qualified his dog as a

companion animal under the regulations, which eliminated that infraction. We obtained volunteers and removed some of the possessions the client had accumulated. We cleaned the apartment with the help of volunteers, but the manager documented the prior inspections during which rat droppings and roaches had been observed. I negotiated a settlement for the client to move into a smaller unit. The Housing Authority believed he would be less likely to accumulate more possessions in a smaller place. Unfortunately, the client would not agree to move so there was no option but to move forward with his administrative hearing. At the hearing, I presented his testimony, witnesses and photographs of the improvements made, but the hearing officer cited the evidence of the prior bug and rodent infestation to rule against the client ordering eviction. I worked with community advocates to obtain relocation for the client.

Everhart v. Westmoreland

898 S.W. 634 (Mo. App. W.D. 1995)

Before: Missouri Western District Court of Appeals

Ulrich, P.J., Kennedy, J. and Berrey, J.

Appellants Counsel: Lisa Gentleman and G. Spencer Miller

Respondent's Counsel: Dan Matula

Appeal was taken after an action to reform a general release for loss of consortium signed by the parents of an injured minor. The parents of the injured minor signed the general release with the insurance company for one tortfeasor in settlement of their claims for injury to their son, Shane Everhart. In the reformation action, the parents and the insurance company agreed to reform the release based upon their mutual mistake in assuming there were no other responsible parties so an additional suit could be brought against a newly discovered second tortfeasor. The second tortfeasor raised the bar to suit of the previously executed general release, but the trial court allowed the reformation of the release to only release the original tortfeasor and insurance company. The second tortfeasor appealed, claiming the trial court misapplied the law and ruled based upon insubstantial evidence. On appeal, the judgment of the trial court was affirmed. It was my responsibility to write the appellate brief in this case.

COURTROOM EXPERIENCE

List of Trials:

State of Missouri v. Billy Shelby (First Chair)

Judge:	The Honorable Forest Hanna
Charge:	Murder two; robbery; armed criminal action
Date of Trial:	2/17/91; jury tried
Verdict:	Guilty
Sentence:	Life; 25 years; 10 years

State of Missouri v. Kevin Baker (Second Chair)

Judge:	The Honorable Edith L. Messina
Charge:	Murder two
Date of Trial:	1/28/91; jury tried
Verdict:	Hung/mistrial
Sentence:	N/A

State of Missouri v. Roy Ramsey (Second Chair)

Judge:	The Honorable Forest Hanna
Charge:	Murder one; burglary
Date of Trial:	12/3/90; jury tried
Verdict:	Guilty
Sentence:	Death

State of Missouri v. Darrell Isaiah (First Chair)

Judge:	The Honorable Jon R. Gray
Charge:	Murder one; armed criminal action
Date of Trial:	11/7/90; jury tried
Verdict:	Guilty
Sentence:	Life without parole; 30 years

State of Missouri v. Preston Carter (Second Chair)

Judge:	The Honorable William Meyers
Charge:	Burglary
Date of Trial:	9/17/90; jury tried
Verdict:	Guilty
Sentence:	Probation

State of Texas v. Michael Hines (First Chair)

Charge:	DWI habitual
Date of Trial:	12/22/89; bench tried
Verdict:	Guilty
Sentence:	5 years and fine

State of Texas v. Lester Johnson (First Chair)

Charge:	Assault of a child
Date of Trial:	12/15/89; jury tried
Verdict:	Guilty
Sentence:	Probation and fine

State of Texas v. Benito Vargas (First Chair)

Charge:	Indecency with child
Date of Trial:	12/1/89; bench tried
Verdict:	Guilty
Sentence:	10 years and fine

State of Texas v. Al Walker (First Chair)

Charge:	Aggravated sexual assault
Date of Trial:	11/22/89; bench tried
Verdict:	Guilty
Sentence:	25 years and fine

State of Texas v. Claudio Escamilla (First Chair)

Charge:	Indecency with child
Date of Trial:	11/17/89; bench tried
Verdict:	Not guilty
Sentence:	N/A

State of Texas v. Alfred Williams (First Chair)

Charge:	Injury to a child
Date of Trial:	11/11/89; bench tried
Verdict:	Guilty
Sentence:	5 years and fine

State of Texas v. Ezell Harris (First Chair)

Charge:	Sexual performance
Date of Trial:	11/3/89; bench tried
Verdict:	Guilty
Sentence:	Probation and fine

State of Texas v. Roy Casarez (First Chair)

Charge:	Sexual assault/child
Date of Trial:	10/27/89; bench tried
Verdict:	Guilty
Sentence:	10 years and fine

State of Texas v. Harold Burnett (First Chair)

Charge:	Aggravated robbery
Date of Trial:	10/20/89; jury tried
Verdict:	Guilty
Sentence:	25 years and fine

State of Texas v. Harold Burnett (First Chair)

Charge:	Aggravated robbery
Date of Trial:	10/10/89; jury tried
Verdict:	Guilty
Sentence:	25 years and fine

State of Texas v. Lee M. Thompson (First Chair)

Charge:	Murder
Date of Trial:	10/3/89; jury tried
Verdict:	Guilty
Sentence:	Life and max. fine

State of Texas v. Jessie Williams (First Chair)

Charge:	Sexual Assault/child
Date of Trial:	9/29/89; bench tried
Verdict:	Guilty
Sentence:	10 years and fine

State of Texas v. Francisco Esquivel (First Chair)

Charge:	Injury to a child
Date of Trial:	9/8/89; bench tried
Verdict:	Guilty
Sentence:	10 years and fine

State of Texas v. Kenneth Sanders (First Chair)

Charge:	Injury to a child
Date of Trial:	9/5/89; bench tried
Verdict:	Guilty
Sentence:	Probation and fine

State of Texas v. Justin T. Mann (First Chair)

Charge:	Forgery
Date of Trial:	8/31/89; bench tried
Verdict:	Guilty
Sentence:	15 years and fine

State of Texas v. Alonzo Law (First Chair)

Charge:	Burglary of a vehicle
Date of Trial:	8/23/89; jury tried
Verdict:	Guilty
Sentence:	25 years and fine

State of Texas v. Larry Sowels (First Chair)

Charge:	Aggravated robbery
Date of Trial:	8/18/89; jury tried
Verdict:	Guilty; bench tried
Sentence:	15 years and fine

State of Texas v. Marvin Gibson (First Chair)

Charge:	Forgery
Date of Trial:	8/17/89; bench tried
Verdict:	Guilty
Sentence:	Probation and fine

State of Texas v. Roy L. Pipkin (First Chair)

Charge:	Rape; Aggravated robbery
Date of Trial:	8/2/89; jury tried
Verdict:	Guilty
Sentence:	Life and maximum fine

State of Texas v. Edward Clark (First Chair)

Charge:	Attempt burglary of building
Date of Trial:	7/12/89; jury tried
Verdict:	Guilty
Sentence:	20 years and fine

State of Texas v. Hillman Trotter (First Chair)

Charge:	Possession of cocaine
Date of Trial:	7/10/89; jury tried
Verdict:	Guilty
Sentence:	40 years and fine

State of Texas v. Will Jackson (First Chair)

Charge:	Burglary of a vehicle
Date of Trial:	7/6/89; bench tried
Verdict:	Guilty
Sentence:	Probation

State of Texas v. George M. Page (First Chair)

Charge:	Aggravated Assault
Date of Trial:	7/6/89; bench tried

Verdict: Guilty
Sentence: 6 years

State of Texas v. Arthur Brown (First Chair)

Charge: Possession of cocaine
Date of Trial: 7/5/89; jury tried
Verdict: Hung
Sentence: N/A

State of Texas v. Hugh L. Stewart (First Chair)

Charge: Aggravated robbery
Date of Trial: 6/26/89; jury tried
Verdict: Not guilty
Sentence: N/A

State of Texas v. Weldon Richardson (First Chair)

Charge: Burglary of a habitation
Date of Trial: 5/25/89; bench tried
Verdict: Guilty
Sentence: Probation and fine

State of Texas v. Luther Bivens (First Chair)

Charge: Attempted murder
Date of Trial: 5/23/89; jury tried
Verdict: Guilty
Sentence: 10 years and fine

State of Texas v. Billy W. Ferrell (First Chair)

Charge: Aggravated robbery
Date of Trial: 5/9/89; jury tried
Verdict: Hung
Sentence: N/A

State of Texas v. Troy M. Turman (First Chair)

Charge: Forgery

Date of Trial: 5/8/89; jury tried
Verdict: Guilty
Sentence: 35 years and fine

State of Texas v. Clark Stanton (First Chair)

Charge: Aggravated robbery
Date of Trial: 5/2/89; jury tried
Verdict: Guilty
Sentence: 30 years and fine

State of Texas v. Kenneth James (First Chair)

Charge: Robbery
Date of Trial: 4/20/89; bench tried
Verdict: Guilty
Sentence: Probation and fine

State of Texas v. Samuel Washington (First Chair)

Charge: Theft over \$750
Date of Trial: 4/17/89; bench tried
Verdict: Not guilty
Sentence: N/A

State of Texas v. Marion M. Johnson (First Chair)

Charge: Theft over \$750
Date of Trial: 4/4/89; jury tried
Verdict: Guilty
Sentence: 15 years and fine

State of Texas v. James T. Henry (First Chair)

Charge: Attempted burglary of building
Date of Trial: 3/27/89; bench tried
Verdict: Guilty
Sentence: Probation and fine

State of Texas v. James R. Adams (First Chair)

Charge:	Possession of cocaine
Date of Trial:	3/24/89; bench tried
Verdict:	Guilty
Sentence:	10 years and fine

State of Texas v. Bobby F. Jackson (First Chair)

Charge:	Murder
Date of Trial:	3/20/89; jury tried
Verdict:	Guilty
Sentence:	Life and maximum fine

State of Texas v. Heide Levy (First Chair)

Charge:	Theft over \$20,000
Date of Trial:	3/6/89; jury tried
Verdict:	Guilty
Sentence:	10 years and fine

State of Texas v. Dennis Jones (First Chair)

Charge:	Theft over \$20,000
Date of Trial:	1/30/89; jury tried
Verdict:	Guilty
Sentence:	5 years

State of Texas v. Michael Terre (First Chair)

Charge:	Possession of cocaine; possession of LSD; possession of heroin
Date of Trial:	1/27/89; jury tried
Verdict:	Guilty
Sentence:	10 years and fine

State of Texas v. Lewis Lester (First Chair)

Charge:	Burglary of building
Date of Trial:	1/13/89; bench tried
Verdict:	Guilty
Sentence:	5 years and fine

State of Texas v. James Schneider (First Chair)

Charge:	Sexual assault
Date of Trial:	12/23/88; bench tried
Verdict:	Guilty
Sentence:	10 years and fine

State of Texas v. Daisy L. Taylor (First Chair)

Charge:	Aggravated assault
Date of Trial:	12/16/88; jury tried
Verdict:	Guilty
Sentence:	2 years and fine

State of Texas v. Cardell Buchanan (First Chair)

Charge:	Burglary of a vehicle
Date of Trial:	12/11/88; bench tried
Verdict:	Guilty
Sentence:	60 years and fine

State of Texas v. Lurrie White (First Chair)

Charge:	Burglary of a habitation
Date of Trial:	12/9/88; jury tried
Verdict:	Guilty
Sentence:	55 years and fine

State of Texas v. Thomas Brown (First Chair)

Charge:	DWI habitual
Date of Trial:	11/25/88; bench tried
Verdict:	Guilty
Sentence:	5 years and fine

State of Texas v. Richard Rogers (First Chair)

Charge:	Resisting arrest
Date of Trial:	4/6/88; jury tried
Verdict:	Guilty
Sentence:	30 days and fine

State of Texas v. Bobby Phillips (First Chair)

Charge:	Assault
Date of Trial:	3/30/88; jury tried
Verdict:	Not guilty
Sentence:	N/A

State of Texas v. Kenneth Garrett (First Chair)

Charge:	Evading arrest
Date of Trial:	3/21/88; jury tried
Verdict:	Guilty
Sentence:	15 days and fine

State of Texas v. Richard Gideon (First Chair)

Charge:	DWI
Date of Trial:	3/14/88; jury tried
Verdict:	Guilty
Sentence:	10 days and fine

State of Texas v. Janice Ferguson (First Chair)

Charge:	DWI; evading arrest
Date of Trial:	2/24/88; jury tried
Verdict:	Not guilty
Sentence:	N/A

Judge finds Truman Med denied doctors due process

BY DAN MARGOLIES
STAFF WRITER

Truman Medical Center acted illegally when it sought to oust a department chair without affording him a hearing, a judge ruled last week.

Jackson County Circuit Judge John Moran found that the hospital denied due process to Dr. Martin Goldman, the head of Truman's radiology department, when it sought to remove him in December 1997.

The action was initiated by E. Ratcliffe Anderson Jr., the former director of Truman Medical Center and now the head of the American Medical Association, after Goldman sought Anderson's ouster in 1997.

Moran's ruling marks the second time this year Anderson has found himself embroiled in controversy. The ex-fighter pilot and former Air Force surgeon general drew flak in January when he fired the longtime editor of the *Journal of the American Medical Association*.

For Goldman, who recently accepted a position as chairman of the radiology department at Creighton University's medical school in Omaha, Neb., Moran's ruling is moot. But the ruling, with its strong endorsement of due process protections for hospital physicians, promises to reverberate through the medical community, which monitored it closely. Among the most forceful advocates of such protections for hospital physicians has been the AMA itself, which has long pushed for greater physician autonomy in the hospital setting.

"Now we have case law that establishes forever that all the doctors on Truman's medical-dental staff are entitled to due process," said Lisa Gentleman, a lawyer for Goldman with Welch Martin Albano & Mannes.

'Destruction and chaos'

Goldman, reached at his home in Kansas City this week, was unsparing in his criticism of Truman, Kansas City's hospital for the indigent, and Anderson,

whom he said "had created a lot of destruction and chaos" at the hospital.

Anderson was named dean of the University of Missouri-Kansas City Medical School and executive director of Truman, the medical school's teaching hospital, in November 1996. He was removed as dean of the medical school in November 1997 and left Truman to join the AMA in June 1998.

"I think the medical center is at least a few years behind now," Goldman said. "They spent one-and-a-half years trying to remove three department chairmen and spent an enormous amount of energy and public money trying to do so. And for no reason. We were all trying to make the center stronger."

A spokeswoman for the AMA said Anderson would have no comment on Moran's ruling.

Truman's new CEO and executive director, John Bluford, said the hospital would examine its bylaws in the wake of the ruling to see if they need to be amended.

"The only spin I can put on the ruling suggests to me that, according to our bylaws, we can't release a physician from administrative responsibilities for no cause," Moran said.

Moran's 17-page decision concerned Anderson's attempt to remove Goldman and two other department chairs at Truman, Peter Kragel of the pathology department and Stephen Hamburger of the internal medicine department. The three were among five physicians who called for Anderson's removal in October 1997 after problems at Truman and the medical school continued to fester under Anderson's watch.

On Dec. 22, 1997, the three sought, and were granted, a temporary restraining order barring Truman from dismissing them. A trial on whether to make the order permanent commenced last February.

Kragel and Hamburger reached confidential settlements with Truman during the trial. Goldman's case proceeded, and last week Moran found that Truman

failed to afford him due process and acted without good cause.

In his findings of fact, Moran said there was substantial evidence that during Anderson's tenure the hospital's medical records department "was in crisis because inadequate resources were being devoted to filing of loose records." Moran cited testimony by the department's head "that were over 31 1/2 feet of loose filings in December 1997."

"Dr. Anderson failed to provide proper leadership in the Medical School at the time of an LCME (Liaison Committee on Medical Education) review in the spring of 1997 for which reason the Medical School was in danger of being placed on probation," Moran wrote. "The consequence of such probation would be disastrous to the future of the Medical School."

After Anderson moved against Goldman, Hamburger and Kragel, he was asked to explain his actions at a meeting of the executive committee of Truman's board in December 1997. Anderson "stood mute," according to Moran's opinion.

Nonetheless, the committee voted to initiate dismissal proceedings against the three. The vote flew in the face of overwhelming votes to retain them by both the medical-dental staff's executive committee and the professional standards committee.

Moran found that Truman's bylaws require that members of the medical staff be given a fair hearing at which they are apprised of charges against them and given a chance to respond.

Moran said the right derived from the standards of the Joint Commission on Accreditation of Health Care Organizations, the ethical standards of the Ameri-



File photo
Former Truman Medical Center Director E. Ratcliffe Anderson Jr.'s management of the hospital came under severe criticism from Circuit Judge John Moran.

can Medical Association and the Missouri Department of Health Regulations.

No lack of controversy

Moran's decision is the second setback for Truman recently. Last month, it agreed to pay \$242,500 to settle federal settle civil fraud allegations. The federal government charged that Truman and Hospital Hill Health Services Corp., Truman's physician services organization, submitted inaccurately coded reimbursement claims for electrocardiogram services between 1994 and 1996.

Anderson, meanwhile, continues to stir up controversy. In January, he enraged many AMA members when he fired George Lundberg, the editor of the *Journal of the American Medical Association* for 17 years and widely regarded as the force behind the journal's rise to scientific preeminence. Anderson said the immediate cause was Lundberg's decision to run a paper reporting that many Midwestern college students surveyed eight years earlier did not consider oral sex to be "having sex."

Anderson said Lundberg had published the article for political reasons. The article coincided with President Clinton's impeachment trial.

J.S., Appellant,

v.

Robert BEAIRD, et al., Respondents.

No. SC 82274.

Supreme Court of Missouri,
En Banc.

Oct. 17, 2000.

3. Statutes \Rightarrow 188

In interpreting statute, words are to be given their plain and ordinary meaning wherever possible.

4. Statutes \Rightarrow 181(2)

Where words of a statute are capable of more than one meaning, the court gives words a reasonable reading rather than an absurd or strained reading.

5. Statutes \Rightarrow 241(1)

Ambiguity in a penal statute will be construed against the government or party seeking to exact statutory penalties and in favor of persons on whom such penalties are sought to be imposed.

James R. Wyrsh, Marilyn B. Keller, Christen D. Shopherd, Kansas City, for appellant.

Lisa N. Gentleman, Deputy County Counselor, Kansas City, for respondents Beaird and Anderson.

Jeremiah W. (Jay) Nixon, Atty. Gen., Jefferson City, Virginia Wasiuk Lay, Asst. Atty. Gen., Kansas city, for intervenor State of Mo.

Reversed and remanded.

1. Mental Health \Rightarrow 469(2)

Under sex offender registration statute, requiring an offender to register with chief law enforcement official within ten days of coming into any county, only a person coming into a county to establish residence is required to register; statute does not apply to a person who already resides in the county. V.A.M.S. \S 589.400.

2. Statutes \Rightarrow 181(1), 205

Cardinal rule of statutory construction is that intention of legislature in enacting statute must be determined, and statute as whole should be looked to in construing any part of it.

JOHN C. HOLSTEIN, Judge.

J.S. was convicted of statutory rape in 1983. He served a prison sentence until 1987 and was discharged from parole in 1993. Since his discharge he has resided in Jackson County, Missouri, and has worked as an over-the-road truck driver. In 1994, the state enacted "Megan's Law," sec. 589.400 to 589.425., RSMo Supp.1999. The statute requires registration by certain sex offenders with the local sheriff's department. In 1999, the Jackson County sheriff notified J.S. that he must register. J.S. filed suit for an injunction and declaratory judgment in the circuit court claiming he is not among those who must register as a sex offender under the statute. He also asserts the statute is an unconsti-

tutional ex post facto law as applied to him. The trial court entered judgment in favor of the Jackson County prosecutor and sheriff. Because J.S.'s petition challenges the validity of a statute of this state, this Court has jurisdiction of the appeal. *Mo. Const. art. V, sec. 3*. Because the law is not applicable to J.S., the judgment is reversed. The Court does not reach the constitutional issue.

[1] Missouri's sex offender registration statute, sec. 589.400, was originally passed in 1994 with an effective date of January 1, 1995. It was amended slightly in 1997. It contains two relevant sections:

1. Sections 589.400 to 589.425 shall apply to:

Any person who, since July 1, 1979, has been or is hereafter convicted of, been found guilty of, or pled guilty to committing, or attempting to commit, a felony offense of chapter 566, . . .

2. Any person to whom sections 589.400 to 589.425 applies shall, within ten days of coming into any county, register with the chief law enforcement official of the county in which such person resides.

The first subsection enumerates those to whom the statute applies. J.S. does not dispute that he falls under subsection 1 as he was found guilty of a felony sex offense under chapter 566 after July 1, 1979. The critical question is whether J.S. falls into that group of sexual offenders "coming into" Jackson County.

[2-4] The cardinal rule of statutory construction is that the intention of the legislature in enacting the statute must be determined and the statute as a whole should be looked to in construing any part of it. *Shipley v. Columbia Mut. Ins. Co.*, 712 S.W.2d 375, 378 (Mo. banc 1986). Words are to be given their plain and ordinary meaning wherever possible.

State ex rel. Maryland Heights Fire Protection Dist. v. Campbell, 736 S.W.2d 383, 387 (Mo. banc 1987). Where the words of a statute are capable of more than one meaning, the court gives the words a reasonable reading rather than an absurd or strained reading. *State v. Schleiermacher*, 924 S.W.2d 269, 276 (Mo. banc 1996).

The obvious legislative intent for enacting sec. 589.400 was to protect children from violence at the hands of sex offenders. But the General Assembly used language that is somewhat awkward when applied to the facts at hand. Instead of a straightforward requirement that prior sex offenders register with the sheriff upon being present in any county for more than ten days, the legislature chose the act of "coming into" any county to trigger the registration requirement.

Under the facts of this case, the phrase "coming into any county" may have any of several meanings. The phrase in its broadest sense may mean that a person such as J.S. must register even though he never left the county of his residence after the law became effective. But a person cannot be said to be "coming into" a county who never left that county. This strained interpretation is not consistent with the meaning of the words used. A second reading is that after the law's effective date, any temporary absence from his home county requires J.S. to register within ten days of his return. This interpretation suggests the legislature intended to require registration by one whose work takes him temporarily away from his home county, but not another person who never left home. Nothing suggests the legislature had that odd purpose in mind. A third reading, the one argued by J.S., is that registration is only required if J.S. establishes a new residence in a county by "coming into" that county after the law's effective date.

In discerning the legislature's intent, it is important to consider the context of the

whole sentence in which the ambiguous phrase appears. A contextual reading indicates that J.S. correctly discerns the legislative intent. The phrase requiring registration by a person "coming into any county" is followed in the same sentence by the phrase requiring registration with the sheriff of "the county in which such person resides." Reading the two phrases together suggests an intent that only a person coming into a county to establish residence must register with the sheriff.

[5] This contextual reading is reinforced by the rule of lenity, that is, that ambiguity in a penal statute will be construed against the government or party seeking to exact statutory penalties and in favor of persons on whom such penalties are sought to be imposed. *State v. Stewart*, 832 S.W.2d 911, 913 (Mo. banc 1992). While the requirement of registration is not necessarily punitive, sections 589.400 to 589.425 penalize a failure to register as a class A misdemeanor and subsequent offenses as a class D felony. Thus, under the rule of lenity, the statute should be construed so that J.S., who has resided in Jackson County since the law came into effect, is not required to register.

The Court concludes that the trial court erred in finding the statute applicable to J.S. because he has been a resident of Jackson County at all times since sec. 589.400 became effective. The judgment is reversed, and the cause is ordered remanded to the trial court for further proceedings consistent with this opinion.

All concur.

Anita L. BAUER, Respondent/Cross-Appellant,

v.

Lynn Willard BAUER,
Appellant/Cross-Respondent.

No. ED 76387.

Missouri Court of Appeals,
Eastern District,
Division Four.

Oct. 3, 2000.

Ex-husband moved to modify dissolution of marriage decree, asking court to terminate his spousal maintenance. The Circuit Court, St. Louis County, David L. Vincent, III, J., modified judgment. Ex-husband and ex-wife both appealed. The Court of Appeals, Sullivan, J., held that: (1) fact that ex-wife did not find employment for a significant period of time after dissolution did not warrant termination of maintenance; (2) \$4000 per month increase in ex-wife's income did not warrant reduction of maintenance obligation; (3) in determining ex-husband's child support obligation, trial court could add as extraordinary expenses activities intended to enhance athletic, cultural and social development of children; (4) ex-wife's contributions to school fund raisers, payments for athletic and school pictures, parent-teacher organization expenses, and expenses for high school parents' association could be considered in determining ex-husband's child support obligation; (5) to the extent modification order suggested that its effect was anything other than imposing an equal responsibility on parties to indemnify each other for improvements made to their respective 50% ownership of marital residence, that language was clarified on appeal to comport with equal division of marital residence set forth in original de-



Briefs and Other Related Documents

Supreme Court of Missouri,
En Banc.
In re: R.W., Appellant,
v.
Michael SANDERS, et al., Respondents.
No. SC 85652.
Jan. 11, 2005.

Background: Convicted sex offender, who received a suspended imposition of sentence, filed a petition for declaratory judgment and injunctive relief to prevent enforcement of sex offender registration statutes and the criminal penalties attending the failure to register. The Circuit Court, Jackson County, Edith Messina, J., denied relief. Offender appealed.

Holdings: The Supreme Court, Richard B. Teitelman, J., held that:

- (1) retrospective application of sex offender registration statutes to offender did not violate constitutional prohibitions of ex post facto laws;
- (2) registration statutes contained no exemption for offenders who received a suspended imposition of sentence;
- (3) registration requirements did not conflict with statute which closed all official records regarding cases in which imposition of sentence is suspended; and
- (4) registration statutes did not violate offender's due process rights.

Affirmed.

West Headnotes

[1] KeyCite Notes



◦ 118A Declaratory Judgment

◦ 118AIII Proceedings

◦ 118AIII(H) Appeal and Error

◦ 118Ak392 Appeal and Error

◦ 118Ak393 k. Scope and Extent of Review in General. Most Cited Cases

The standard of review in a declaratory judgment case is the same as in any other court-tried case; the judgment will be affirmed unless there is no substantial evidence to support the judgment, the judgment is against the weight of the evidence, or the judgment erroneously declares or applies the law.

[2] KeyCite Notes



◦ 92 Constitutional Law

◦ 92VIII Retrospective and Ex Post Facto Laws

◦ 92k198 Retroactive Operation of Ex Post Facto Laws

◦ 92k203 k. Nature or Extent of Punishment. Most Cited Cases

◦ 257A Mental Health KeyCite Notes



◦ 257AIV Disabilities and Privileges of Mentally Disordered Persons

100 U.S.W. 65

☞ 257AIV(E) Crimes

☞ 257Ak433 Constitutional and Statutory Provisions

☞ 257Ak433(2) k. Sex Offenders. Most Cited Cases

Sex offender registration statutes did not impose punishment and, thus, the retrospective application of the registration statutes to convicted sex offender did not violate constitutional prohibitions of ex post facto laws, although registration statutes could deter future crimes; registration statutes were distinguishable from traditional notions of punishment, and registration requirements were not retributive, did not impose affirmative disability or restraint, advanced non-punitive purpose of public safety and protecting children from sex offenders, and were not excessive in relation to regulatory purposes. U.S.C.A. Const. Art. 1, § 10, cl. 1; V.A.M.S. Const. Art. 1, § 13; V.A.M.S. § 589.400 et seq.



[3] KeyCite Notes

☞ 92 Constitutional Law

☞ 92II Construction, Operation, and Enforcement of Constitutional Provisions

☞ 92k44 Determination of Constitutional Questions

☞ 92k48 Presumptions and Construction in Favor of Constitutionality

☞ 92k48(4) Application to Particular Legislation or Action or to Particular Constitutional Questions

☞ 92k48(4,1) k. In General. Most Cited Cases

To prevail on claim that sex offender registration requirements, as applied to him, violated constitutional prohibitions of ex post facto laws, convicted sex offender had to overcome the presumption that statutes are constitutional. U.S.C.A. Const. Art. 1, § 10, cl. 1; V.A.M.S. Const. Art. 1, § 13; V.A.M.S. § 589.400 et seq.



[4] KeyCite Notes

☞ 92 Constitutional Law

☞ 92II Construction, Operation, and Enforcement of Constitutional Provisions

☞ 92k44 Determination of Constitutional Questions

☞ 92k48 Presumptions and Construction in Favor of Constitutionality

☞ 92k48(3) k. Doubtful Cases; Construction to Avoid Doubt. Most Cited Cases

Statutes that are the subject of a constitutional challenge will be upheld unless they clearly and undoubtedly violate constitutional limitations.



[5] KeyCite Notes

☞ 92 Constitutional Law

☞ 92II Construction, Operation, and Enforcement of Constitutional Provisions

☞ 92k44 Determination of Constitutional Questions

☞ 92k48 Presumptions and Construction in Favor of Constitutionality

☞ 92k48(1) k. In General. Most Cited Cases

Party raising a constitutional challenge to a statute bears the burden of demonstrating that the statute is unconstitutional.



[6] KeyCite Notes

92 Constitutional Law

92VIII Retrospective and Ex Post Facto Laws

92k197 k. Nature of Ex Post Facto Laws. Most Cited Cases

A constitutionally prohibited ex post facto law is one that provides for punishment for an act that was not punishable when it was committed or that imposes an additional punishment to that in effect at the time the act was committed. U.S.C.A. Const. Art. 1, § 10, cl. 1; V.A.M.S. Const. Art. 1, § 13.



[7] KeyCite Notes

92 Constitutional Law

92VIII Retrospective and Ex Post Facto Laws

92k197 k. Nature of Ex Post Facto Laws. Most Cited Cases

A two-stage inquiry determines whether a retrospective statute constitutes an invalid ex post facto punishment or a valid, non-punitive civil regulation; if the statute was intended to establish a punishment, the inquiry ends and an ex post facto violation is established, but if the statute was intended to establish a non-punitive, civil regulatory system, the inquiry proceeds to a determination of whether the statute is sufficiently punitive in effect so as to negate the General Assembly's intent to enact a non-punitive civil regulation. U.S.C.A. Const. Art. 1, § 10, cl. 1; V.A.M.S. Const. Art. 1, § 13.



[8] KeyCite Notes

92 Constitutional Law

92VIII Retrospective and Ex Post Facto Laws

92k197 k. Nature of Ex Post Facto Laws. Most Cited Cases

The location and labels of a statutory provision do not by themselves transform a civil remedy into a criminal one, for purposes of determining whether the statute constitutes an invalid ex post facto punishment. U.S.C.A. Const. Art. 1, § 10, cl. 1; V.A.M.S. Const. Art. 1, § 13.



[9] KeyCite Notes

92 Constitutional Law

92VIII Retrospective and Ex Post Facto Laws

92k197 k. Nature of Ex Post Facto Laws. Most Cited Cases

When a statute is an incident of the State's power to protect the health and safety of its citizens, it will be considered as evidencing an intent to exercise that regulatory power, and not a purpose to add to the punishment, for purposes of determining whether the statute is an invalid ex post facto punishment. U.S.C.A. Const. Art. 1, § 10, cl. 1; V.A.M.S. Const. Art. 1, § 13.



[10] KeyCite Notes

92 Constitutional Law

92VIII Retrospective and Ex Post Facto Laws

92k197 k. Nature of Ex Post Facto Laws. Most Cited Cases

Five factors are utilized for assessing whether a statute constitutes a punishment under the Ex Post Facto Clause; the factors are whether the requirements have been regarded in history and traditions

as punishment, promote the traditional aims of punishment, impose an affirmative disability or restraint, have a rational connection to a non-punitive purpose, or are excessive with respect to the purpose. U.S.C.A. Const. Art. 1, § 10, cl. 1; V.A.M.S. Const. Art. 1, § 13.



[11] KeyCite Notes

↻92 Constitutional Law

↻92VIII Retrospective and Ex Post Facto Laws

↻92k197 k. Nature of Ex Post Facto Laws. Most Cited Cases

Whether a statute has a rational connection to a non-punitive purpose is a most significant factor in the ex post facto analysis. U.S.C.A. Const. Art. 1, § 10, cl. 1; V.A.M.S. Const. Art. 1, § 13.



[12] KeyCite Notes

↻257A Mental Health

↻257AIV Disabilities and Privileges of Mentally Disordered Persons

↻257AIV(E) Crimes

↻257Ak469 Registration and Community Notification

↻257Ak469(2) k. Persons and Offenses Included. Most Cited Cases

Sex offender registration statutes applied to convicted sex offender who received a suspended imposition of sentence after pleading guilty to a sex offense; statutes provided no exemption for those who received a suspended imposition of sentence, but instead obligated all persons who pled guilty to sex offense to register as a sex offender. V.A.M.S. § 589.400, subd. 1.



[13] KeyCite Notes

↻257A Mental Health

↻257AIV Disabilities and Privileges of Mentally Disordered Persons

↻257AIV(E) Crimes

↻257Ak469 Registration and Community Notification

↻257Ak469(5) k. Effect of Assessment or Determination; Notice and Registration. Most Cited Cases

Statutory requirement that convicted sex offender, who received suspended imposition of sentence, register with county sheriff by providing the information required by sex offender registration statutes did not conflict with statute which closed all official records regarding cases in which imposition of sentence was suspended; registration statutes did not require the records of offender's court proceeding to be opened and did not permit public access to offender's official arrest, court and conviction records. V.A.M.S. §§ 589.400 et seq., 610.105.



[14] KeyCite Notes

↻92 Constitutional Law

↻92XII Due Process of Law

↻92k255 Deprivation of Life or Liberty in General

↻92k255(5) k. Diseased and Mentally Disordered Persons; Addicts. Most Cited Cases



257A Mental Health KeyCite Notes

257AIV Disabilities and Privileges of Mentally Disordered Persons

257AIV(E) Crimes

257Ak433 Constitutional and Statutory Provisions

257Ak433(2) k. Sex Offenders. Most Cited Cases

Sex offender registration statutes did not violate due process rights of convicted sex offender who received suspended imposition of sentence; offender was charged with a sex offense and pled guilty, and he was notified of his legal obligation to register at the time of his plea and received all procedural safeguards attending a guilty plea. U.S.C.A. Const.Amend. 14; V.A.M.S. § 589.400 et seq.

*67 John R. Cullom, Kansas City, MO, for Appellant.

Lisa Noel Gentleman, Kansas City, MO, for Respondents.

Jeremiah W. (Jay) Nixon, Atty. Gen., Michael Pritchett, Asst. Atty. Gen., Jefferson City, MO, Amicus Curiae.

RICHARD B. TEITELMAN, Judge.

R.W. filed a petition for declaratory judgment and injunctive relief to prevent enforcement of Missouri's sex offender registration statutes, section 589.400, et seq.^{FN1} The circuit court denied relief. In this appeal, R.W. argues that the registration statute does not apply to offenders who receive a suspended imposition of sentence, conflicts with the section 610.105 requirement that records pertaining to a suspended imposition of sentence case shall be closed, and constitutes an invalid *ex post facto* law. The judgment is affirmed.

FN1. All statutory citations are to RSMo 2000 unless otherwise indicated.

BACKGROUND

All fifty states, the District of Columbia, and the federal government have adopted some form of sex offender registration and community notification statutes premised upon what is commonly referred to as "Megan's Law." See, Wayne A. Logan, *Liberty Interests in the Preventive State: Procedural Due Process and Sex Offender Community Notification Laws*, 89 J. Crim. L. & Criminology 1167, 1171 (1999). Missouri codified its version of Megan's Law in sections 589.400 to 589.425. The statutes became effective on January 1, 1995, and require "[a]ny person who, since July 1, 1979, has been or is hereafter convicted of, been found guilty of, or pled guilty to committing, or attempting to commit, an offense of chapter 566" to register with the chief law enforcement officer of the county of the offender's residence. Section 589.400. Registrants are required to provide information to authorities, including their name, address, social security number, telephone number, place of employment, enrollment with any institution of higher learning, the date and place of conviction or plea, the age and gender of the victim at the time of the offense, fingerprints and a photograph. Section 589.407. The public may request from the county's chief law enforcement official the names, addresses and crimes for which offenders are registered. Section 589.417. If the victim was under 18 years of age, the offender must report in person to the county law enforcement agency every 90 days in order to verify the information provided. Section 589.414.4.

Registration is a lifetime requirement unless all offenses requiring registration are reversed, vacated, set aside or the offender is pardoned. Section 589.400.3. Failure to register is a class A misdemeanor, and any subsequent failure to register is a class D felony. Section 589.425.


On March 30, 1994, R.W. was charged with one count of sodomy and one count of *68 sexual assault in the first degree. The conduct involved a minor. On February 9, 1995, after section 589.400 became effective, R.W. pleaded guilty to the sexual assault. The court suspended imposition of sentence, and R.W. was placed on probation for five years. As a condition of his probation, R.W. was required to register as a sex offender under section 589.400.

After R.W. completed his probation, he ceased registering as a sex offender. In April 2003, the Jackson County sheriff's office requested that R.W. register as sex offender and renew his registration





every 90 days. R.W. declined to register.


R.W. filed a petition for declaratory judgment and injunctive relief to prevent enforcement of the registration statutes and the criminal penalties attending the failure to register. The circuit court denied relief. On appeal, R.W. argues, *inter alia*, that the sex offender registration statutes as applied to him are unconstitutional. He raises three points on appeal.

ANALYSIS


[1]  The standard of review in a declaratory judgment case is the same as in any other court-tried case. Levinson v. State, 104 S.W.3d 409, 411 (Mo. banc 2003). The judgment will be affirmed unless there is no substantial evidence to support the judgment, the judgment is against the weight of the evidence, or the judgment erroneously declares or applies the law. Lueckenotte v. Lueckenotte, 34 S.W.3d 387, 393 (Mo. banc 2001).



I. *Ex Post Facto*

[2]  [3]  [4]  [5]  R.W. contends that the registration requirement, as applied to him, is an invalid *ex post facto* law because it constitutes a new penalty for a crime he committed before the registration requirements were enacted. In order to prevail on this claim, R.W. must overcome the presumption that statutes are constitutional. Westin Crown Plaza Hotel Co. v. King, 664 S.W.2d 2, 5 (Mo. banc 1984). The registration statutes will be upheld unless they "clearly and undoubtedly" violate constitutional limitations. In re Marriage of Kohring, 999 S.W.2d 228, 231 (Mo. banc 1999). As the party raising the challenge, R.W. bears the burden of demonstrating that the statute is unconstitutional. C.C. Dillon Co. v. City of Eureka, 12 S.W.3d 322, 327 (Mo. banc 2000).


[6]  The United States and Missouri constitutions both prohibit *ex post facto* laws. A constitutionally prohibited *ex post facto* law is one that "provides for punishment for an act that was not punishable when it was committed or that imposes an additional punishment to that in effect at the time the act was committed." Cooper v. Mo. Bd. of Prob. & Parole, 866 S.W.2d 135, 137-38 (Mo. banc 1993).

The registration statutes operate retrospectively in this case. R.W. committed the crime prior to the enactment of registration statutes and, because of the subsequent enactment of the statutes, is required to register as a sex offender. Accordingly, the issue is whether the registration requirements constitute a punishment.

[7]  A two-stage inquiry determines whether a retrospective statute constitutes an invalid *ex post facto* punishment or a valid, non-punitive civil regulation. If registration statutes were intended to establish a punishment, the inquiry ends and an *ex post facto* violation is established. Smith v. Doe, 538 U.S. 84, 92, 123 S.Ct. 1140, 155 L.Ed.2d 164 (2003) (holding that Alaska's sex offender registration statute is not an invalid *ex post facto* law because it is civil and non-punitive). If the registration statutes are intended to establish a non-punitive, civil regulatory system, the *69 inquiry proceeds to a determination of whether the registration statutes are sufficiently punitive in effect so as to negate the General Assembly's intent to enact a non-punitive civil sex offender registration program. *Id.*

[8]  [9]  The Missouri registration statutes do not clearly express the General Assembly's intent to make the registration statutes civil or criminal. There is evidence that the registration statutes were intended to be criminal and punitive insofar as the statutes are located in Title XXXVIII dealing with "Crimes and Punishment." However, "the location and labels of a statutory provision do not by themselves transform a civil remedy into a criminal one." Smith, 538 U.S. at 94, 123 S.Ct. 1140, (quoting United States v. One Assortment of 89 Firearms, 465 U.S. 354, 365, 104 S.Ct. 1099, 79 L.Ed.2d 361 (1984)). Furthermore, this Court has previously stated that the "obvious legislative intent for enacting section 589.400 was to protect children from violence at the hands of sex

offenders." J.S. v. Beaird, 28 S.W.3d 875, 876 (Mo.2000). When a statute is "an incident of the State's power to protect the health and safety of its citizens," it will be considered "as evidencing an intent to exercise that regulatory power, and not a purpose to add to the punishment." Smith, 538 U.S. at 93-94, 123 S.Ct. 1140 (quoting Flemming v. Nestor, 363 U.S. 603, 616, 80 S.Ct. 1367, 4 L.Ed.2d 1435 (1960)). Given the lack of clear legislative intent, the registration statutes must be analyzed to determine if they are sufficiently punitive in effect to constitute a retrospective punishment.

[10]  In Smith v. Doe, the Court utilized five factors for assessing whether a statute constitutes a punishment under the *Ex Post Facto* Clause. The factors are whether the registration requirements: have been regarded in our history and traditions as punishment; promote the traditional aims of punishment; impose an affirmative disability or restraint; have a rational connection to a non-punitive purpose; or are excessive with respect to the purpose. Id. at 97, 123 S.Ct. 1140. The Court determined these factors indicated that the Alaska registration statute did not constitute a punishment. Essentially the same analysis leads to the same conclusion in this case: the Missouri registration statutes, as applied to R.W., do not constitute an invalid *ex post facto* law.

A. Traditional notions of punishment

The Missouri registration statutes are distinguishable from traditional notions of punishment. First, registration has not traditionally been viewed as punishment. See, Lambert v. People of State of California, 355 U.S. 225, 229, 78 S.Ct. 240, 2 L.Ed.2d 228 (1957) (ordinance requiring felons to register was designed for the convenience of law enforcement). Registration is traditionally a government method of making available relevant and necessary information to law enforcement, not a method of punishment.

Second, unlike historical punishments such as stocks or contemporary punishments such as incarceration, the registration requirements do not physically confine or restrain the movement on a registrant. Moreover, the registrant is not intentionally subjected to public shaming or humiliation. The "dissemination of truthful information in furtherance of a legitimate governmental objective" is generally not regarded as punishment. Smith, 538 U.S. at 98, 123 S.Ct. 1140.


B. Traditional aims of punishment

Two traditional aims of punishment are deterrence of future crimes and retribution for past crimes. *70 Smith v. Doe, 538 U.S. at 102, 123 S.Ct. 1140. Although the registration statutes may deter future crimes, the mere presence of a deterrent effect does not establish that registration constitutes a punishment because "any number of governmental programs might deter crime without imposing punishment." Id. Along with any deterrent effect, the registration statutes also serve the regulatory purpose of assisting authorities with investigation of sex crimes. The registration requirements are not retributive because all offenders are subject to lifetime registration. A retributive scheme would impose progressively longer registration periods based upon the severity of the underlying sex offense. While offenders such as R.W. who commit a sex offense against a minor have to update their registration more frequently, this is reasonably related to the regulatory objective of reducing recidivism and more efficiently investigating crimes against minors.

C. Affirmative disability or restraint

The Missouri registration statutes require registrants to provide fingerprints, a photograph and written information concerning the offender and the underlying offense. However, the registrant is otherwise free to travel and go about his or her daily activities with no additional intrusion from governmental officials. Any restrictions on housing and employment are collateral consequences of the underlying sex offense, not the registration requirement.

D. Rational connection to a non-punitive purpose

[11]  Whether a statute has a rational connection to a non-punitive purpose is a "most significant"

factor in the *ex post facto* analysis. *Smith v. Doe*, at 102, 123 S.Ct. 1140, (quoting *United States v. Ursery*, 518 U.S. 267, 290, 116 S.Ct. 2135, 135 L.Ed.2d 549 (1996)). The registration requirement advances the legitimate, non-punitive purpose of public safety and protecting children from sex offenders. *J.S. v. Beaird*, 28 S.W.3d 875, 876 (Mo.2000).

E. Excessiveness with respect to the purpose

The registration statutes are not excessive in relation to the regulatory purposes. As applied to those who, as did R.W., commit sex offenses against a minor, the registration requirement is not excessive given the assistance it provides law enforcement agencies in investigating future offenses.


Furthermore, as noted above, the registration requirements do not impose substantial physical or legal impediments upon a registrant's ability to conduct his or her daily affairs.

While the registration statutes have both punitive and regulatory attributes, a weighing of the factors above leads to the conclusion that the thrust of the registration and notification requirements are civil and regulatory in nature. R.W. has not carried his burden of "clearly and undoubtedly" showing that the registration statutes violate constitutional limitations on *ex post facto* laws. ^{FN2}


^{FN2}. Other state courts rejecting *ex post facto* challenges to state sex offender registration statutes include: *Robinson v. State*, 730 So.2d 252 (Ala.Crim.App.1998) (registration and notification requirements are not punishment); *State v. Noble*, 171 Ariz. 171, 829 P.2d 1217 (1992); *Kellar v. Fayetteville Police Dept.*, 339 Ark. 274, 5 S.W.3d 402 (1999); *People v. Castellanos*, 21 Cal.4th 785, 88 Cal.Rptr.2d 346, 982 P.2d 211 (1999); *People v. Stead*, 66 P.3d 117 (Colo.App.2003) (internet posting of information from sex offender registry did not constitute additional punishment); *Helman v. State*, 784 A.2d 1058 (Del.2001); *Ray v. State*, 133 Idaho 96, 982 P.2d 931 (1999); *People v. Malchow*, 193 Ill.2d 413, 250 Ill.Dec. 670, 739 N.E.2d 433 (2000); *Spencer v. O'Connor*, 707 N.E.2d 1039 (Ind.Ct.App.1999); *State v. Pickens*, 558 N.W.2d 396 (Iowa 1997); *Hyatt v. Commonwealth*, 72 S.W.3d 566 (Ky.2002); *Opinion of the Justices of the Senate*, 423 Mass. 1201, 668 N.E.2d 738 (1996); *State v. Haskell*, 784 A.2d 4 (Me.2001); *People v. Pennington*, 240 Mich.App. 188, 610 N.W.2d 608 (2000); *State v. Manning*, 532 N.W.2d 244 (Minn.App.1995); *State v. Mount*, 317 Mont. 481, 78 P.3d 829 (2003); *State v. Torres*, 254 Neb. 91, 574 N.W.2d 153 (1998); *State v. Costello*, 138 N.H. 587, 643 A.2d 531 (1994); *Doe v. Poritz*, 142 N.J. 1, 662 A.2d 367 (1995); *State v. Druktenis*, 135 N.M. 223, 86 P.3d 1050 (Ct.App.2004); *People v. Grice*, 254 A.D.2d 710, 679 N.Y.S.2d 771 (1998); *State v. Sakobie*, 598 S.E.2d 615 (N.C.App.2004); *State v. Burr*, 598 N.W.2d 147 (N.D.1999); *State v. Cook*, 83 Ohio St.3d 404, 700 N.E.2d 570 (1998); *State v. MacNab*, 334 Or. 469, 51 P.3d 1249 (2002); *Commonwealth v. Gaffney*, 557 Pa. 327, 733 A.2d 616 (1999); *State v. Walls*, 348 S.C. 26, 558 S.E.2d 524 (2002); *Meinders v. Weber*, 604 N.W.2d 248 (S.D.2000); *White v. State*, 988 S.W.2d 277 (Tex.App.1999); *Kitze v. Commonwealth*, 23 Va.App. 213, 475 S.E.2d 830 (1996); *State v. Ward*, 123 Wash.2d 488, 869 P.2d 1062 (1994); *Hensler v. Cross*, 210 W.Va. 530, 558 S.E.2d 330 (2001); *Snyder v. State*, 912 P.2d 1127 (Wyo.1996).

*71 II. Statutory Construction

R.W. sets forth two statutory construction challenges to the requirement that he register as a sex offender.


[12]  First, he argues that the registration statutes do not provide for registration of convicted sex offenders who receive a suspended imposition of sentence. While section 589.400(1) does not expressly provide for registration for offenders receiving a suspended imposition of sentence, it also provides no exemption. The statute obligates all persons "convicted of, been found guilty of or pled guilty to committing" an enumerated sex offense to register as a sex offender. R.W. does not dispute that he pled guilty to a sex offense. R.W. is, therefore, required to register.

100 U.S. 100 00

[13]  Second, R.W. argues that the registration statutes conflict with section 610.105, ^{FN3} which closes all official records regarding cases in which imposition of sentence is suspended. The registration statutes do not require the records of a court proceeding to be opened and, therefore, do not conflict with section 610.105. The registration statutes require only that R.W. register with the county sheriff by providing the information required by statute to be maintained on the registry. The registration requirements in no way permit public access to the official arrest, court and conviction records made confidential by section 610.105.

FN3. Section 610.105 reads, in pertinent part: "If the person arrested is charged but the case is subsequently nolle prossed, dismissed, or the accused is found not guilty or imposition of sentence is suspended in the court in which the action is prosecuted, official records pertaining to the case shall thereafter be closed records when such case is finally terminated except that the disposition portion of the record may be accessed and except as provided in section 610.120."

III. Due Process

[14]  R.W. argues that the registration requirements violate his fundamental due process rights to liberty and privacy. In Connecticut Dept. of Public Safety et al., v. Doe, the United States Supreme Court held that Connecticut's sex offender registration statute did not violate the due process rights of registrants. 538 U.S. 1, 7, 123 S.Ct. 1160, 155 L.Ed.2d 98 (2003). Because the ultimate fact determining whether a person had to register was conviction of sex crime, the Court found that the criminal procedures leading to conviction provided the registrant with a sufficient procedurally safeguarded opportunity to challenge the conviction that triggered the registration requirement. *Id.* The analysis in Connecticut v. Doe controls this case. R.W. was charged with a sex offense and pled guilty. He was notified of his legal obligation to register at *72 the time of his plea and received all procedural safeguards attending a guilty plea. No further process was necessary. The judgment is affirmed.

All concur.

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Briefs and Other Related Documents ([Back to top](#))

- [2004 WL 3094427](#) (Appellate Brief) Brief of Amicus Curiae State of Missouri (Sep. 29, 2004)
 - [2004 WL 3094426](#) (Appellate Brief) Appellant's Brief (Apr. 01, 2004)
- END OF DOCUMENT

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LAWMO Spotlight



Lisa Gentleman
President, Board of Trustees

Lisa Gentleman, Deputy County Counselor for Jackson County, is LAWMO's new board President. Strongly committed to seeking the maximum amount of funding possible for LAWMO, Lisa is passionate about ensuring Legal Aid's ongoing presence in the community and is pleased to continue her association with LAWMO in her new role. She is also a member of LAWMO's *Justice For All* (JFA) Campaign Leadership Committee, a group of private attorneys dedicated to unlocking doors to new funding sources for LAWMO. According to Lisa, "We need to increase funding through the state government channels and from the community in order for LAWMO to continue its work and to expand its services in the future."

Lisa also wants to encourage LAWMO attorneys to hang in there. "LAWMO has an excellent reputation because of its ranks of quality attorneys, and I want this tradition to con-

tinue. In order to do so, the salaries need to be more competitive, because it's difficult to retain committed lawyers if the money isn't there," she said.

Funding is one of LAWMO's greatest challenges and bridging this gap is LAWMO's goal. Serving clients who cannot afford legal representation is the beacon leading the Board to create new and better strategies to get there. "While it sounds like it's all about money, the money is the means by which we can meet our end, which is to ensure every person in need in LAWMO's 40-county service area receives assistance," Lisa said. "What better mission could there be?"

In 1998, Lisa received the Outstanding Leadership Award honoring her work as President of the Association for Women Lawyers (AWL) of Greater Kansas City and her service as an officer of the AWL Board. She is a board member of the L.E.A.P. (Lawyers Encouraging Academic Performance) Foundation and is chairing its fundraising committee for the third consecutive year. Lisa has practiced law since 1986 handling various types of litigation and completing more than 100 jury trials. Her practice emphasis is in personal injury and employment discrimination matters. "Seeing people and organizations succeed, especially humanitarian organizations like Legal Aid of Western Missouri, has made my work much more rewarding," she said.